

7 February, 2005.

The Secretary
Senate Environment Communications Information Technology
And the Arts Legislation Committee
Parliament House
CANBERRA ACT 2600.

**RE: ENQUIRY INTO THE POWERS OF THE PROPOSED AUSTRALIAN
COMMUNICATIONS AND MEDIA AUTHORITY (“ACMA”)**

I understand that the Senate has referred to your Committee for consideration the provisions of the Australian Communications and Media Authority legislation. I note you will be specifically considering whether the powers of the proposed ACMA and the Australian Competition and Consumer Commission (“ACCC”) will be sufficient to deal with emerging market and technical issues in telecommunications.

I wish to submit the following for your consideration.

This submission relates only to the powers of the proposed ACMA in relation to the Deployment of telecommunications facilities as provided by the Telecommunications Act, 1997 (“the Act”) (and related legislation) and in particular Low Impact telecommunications facilities. The Act (Schedule 3) gives telecommunications carriers immunity from complying with State planning and environment laws when siting a telecommunications facility if that facility comes within the Telecommunications (Low -Impact Facilities Determination) 1997 (“the Determination”. At present, the Australian Communications Authority (ACA) does not see it has any role in oversighting of carrier activities to ensure that facilities installed by carriers as low impact facilities come within what is authorised by the Determination. That determination has been left to individual local Councils or planning authorities. The ACA appears to have a role where a carrier has installed a low impact facility but has otherwise contravened Schedule 3 of the Act, the legislative Code of Practice (Telecommunications Code of Practice 1997) and the industry Code (ACIF Code – Deployment of Radiocommunications Infrastructure).

I submit that the proposed ACMA should have responsibility for oversighting the installation of low impact telecommunications facilities. The ACMA should be given powers to enable it to:

- (a) give advisory opinions to Councils and landowners about whether low impact facility proposals come within the Determination and whether activities by carriers are authorised by law;
- (b) require a carrier to demonstrate that a facility is in fact a low impact facility where planning approval is not required;
- (c) where the ACMA is of the view that a facility which is installed is not a low impact facility require a carrier to remove it;
- (d) review decisions made by carriers about the siting of facilities when applying the precautionary principle as required by the ACIF Code such that any decision of the ACMA will bind the carrier.

Why are these powers recommended:

- (a) a consistent approach to deployment of facilities can be achieved;
- (b) the carrier's decision about where to site a facility can be reviewed to ensure that the precautionary principle has been applied and proper balance has been achieved between the need for a facility and the protection of human health;
- (c) public confidence in the process can be restored. Telecommunications carriers are in the main private corporations operating for profit whose officers are required to act in the interests of their shareholders. The ACIF Code requires carriers to consider public health issues in making decisions about siting of facilities (ie minimizing EMR exposure to the public). As such there is the potential for conflict of interest situations to arise, and
- (d) the burden upon local Councils to determine difficult legal and technical issues about whether facilities require Council approval, at sometimes great expense to the ratepayer, is relieved because Councils can turn to the ACA for advice. Further to (a) above a consistent approach to interpretation of the legislation can be achieved.

Yours faithfully,

Kerrie Adra

The Committee agreed not to publish the contact details for this submission